

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NORTH MARSHALL WATER DISTRICT

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ALLEGED VIOLATIONS OF KRS 278.160

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) CASE NO. 95-107  
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O R D E R

On March 24, 1995, the Commission ordered North Marshall Water District ("North Marshall") and Roy C. Brien, Gary E. Clark, Dorothy Coffeen, Bennie W. Darnell, and John R. Travis (collectively "the Commissioners"), to show cause why they should not be subject to the penalties of KRS 278.990(1) for their alleged violations of KRS 278.160 and 278.170

Following the commencement of this proceeding, North Marshall, its Commissioners, and Commission Staff entered into negotiations to resolve all disputed issues. On August 30, 1995, they executed a Settlement Agreement, which is appended hereto, and subsequently submitted it for Commission approval.

After reviewing the Settlement Agreement and being otherwise sufficiently advised, the Commission finds that, while most of the Settlement Agreement's provisions conform with the law, those provisions which relieve North Marshall of its obligation to collect all undercharges violate KRS 278.160 and 278.170.

KRS 278.160 requires a utility to file with the Commission "schedules showing all rates and conditions for service established

by it and collected or enforced." KRS 278.160(1). It further states:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

KRS 278.160(2). Simply put, the statute demands that a utility strictly adhere to its published rate schedules and not, either by agreement or conduct, depart from them.

While KRS 278.160(2) limits a utility's authority to depart from its filed rate schedules, KRS 278.170(1) imposes an affirmative obligation upon a utility to charge and collect its prescribed rates. KRS 278.170(1) requires a utility to treat all similarly situated customers in substantially the same manner. If a utility fails to collect from a customer the full amount required by its filed rate schedule, it effectively grants a preference in rates to that customer as it allows him to pay less than other customers for the same service.

This Commission has interpreted KRS 278.170 as imposing an affirmative duty upon a utility to collect undercharges from established rates. See Green River Electric Corporation, Case No. 10205 (Ky. P.S.C. Jun. 6, 1989) at 8. See also Corporation De Gestion Ste-Foy v. Florida Power and Light Co., 385 So.2d 124 (Fla. Dist. Ct. App. 1980) ("[I]t is universally held that a public utility or common carrier is not only permitted but is required to

collect undercharges from established rates, whether they result from its own negligence or even from a specific contractual undertaking to charge a lower amount." ).

As the Settlement Agreement relieves North Marshall of its obligation to collect all undercharges,<sup>1</sup> it violates KRS 278.160 and 278.170. The Commission must reject it unless the provisions related to the collection of undercharges are deleted and North Marshall Water District is required to collect all undercharges to the fullest extent permitted by law.

While the amount of undercharges is small, the principle at stake is not. The filed rate doctrine is the bedrock of utility rate regulation. Acceptance of the Settlement Agreement would erode the basic bulwark against rate discrimination and arbitrary utility action. Even the smallest erosion of this rule must be avoided.

The Commission finds that the Settlement Agreement, with the exception of those provisions dealing with the reimbursement of water service, should be approved. The Commission further finds that approval of this Settlement Agreement should be conditioned

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<sup>1</sup> The Settlement Agreement limits the collection of undercharges from the Commissioners to those for service received from June 1994 to March 1995. It does not require collection of undercharges from the Commissioners which occurred for service provided before June 1994 nor does it require collection of any undercharges from other water district employees. KRS 278.225 permits North Marshall Water District to bill for all undercharges within two years of the date of service.

upon North Marshall's collection of all amounts underbilled to the fullest extent permitted by law.<sup>2</sup>

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement, as modified in this Order, is approved.

2. North Marshall is assessed a penalty of Twenty-Five (\$25) Dollars. North Marshall shall pay the assessed penalty within 20 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky.

3. Roy C. Brien, Gary E. Clark, Dorothy Coffeen, Bennie W. Darnell, and John R. Travis are each assessed a penalty of Five Hundred Dollars (\$500.00) for their violation of KRS 278.160 and 278.170. Each shall pay the assessed penalty within 20 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order

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<sup>2</sup> KRS 278.225 states:

All service supplied by a utility shall be billed within two (2) years of the service. No customer shall be liable for unbilled service after two (2) years from the date of the service, unless the customer obtained the service through fraud, theft, or deception.

Accordingly, North Marshall should bill those persons who have previously received free or reduced rate service for all unbilled service received within two years of its next billing.

shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky.

4. The Commissioners may pay their assessed penalties over a period of five months in equal installments of One Hundred Dollars (\$100.00). The first installment shall be made within twenty (20) days of the date of this Order. On the first day of each month thereafter, each Commissioner making payments by installment shall pay an additional installment of One Hundred Dollars (\$100.00) until the assessed penalty is paid in full.

5. North Marshall shall bill all persons who have received free or reduced rate service the full amount for that service to the fullest extent provided by law.

6. If North Marshall or any of the Commissioners wish to exercise his or her right to withdraw from the Settlement Agreement because of modifications ordered herein, he or she shall notify the Commission in writing within 15 days of the date of this Order.

7. If North Marshall or any of the Commissioners exercises his or her right to withdraw from the Settlement Agreement, Ordering Paragraphs 1 through 5 of this Order shall be vacated and North Marshall and the Commissioners shall appear before the Commission on November 14, 1995 at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of showing

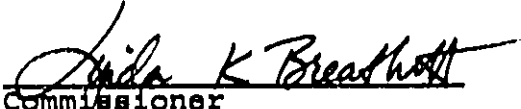
cause why they should not be penalized for their alleged violations of KRS 278.160 and KRS 278.170.

Done at Frankfort, Kentucky, this 13th day of October, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director